

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SAVINO DEL BENE U.S.A., INC.,

Plaintiff,

-V-

INTERNATIONAL PAPER SOLUTIONS CO.,

Defendant.

20 Civ. 8745 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

During a conference held on January 11, 2022, the Court granted Mark D. Herman’s unopposed request to withdraw as counsel for Defendant International Paper Solutions Co. Dkt. 32. Also on January 11, 2022, the Court issued an Order advising Defendant that “as a corporation, it cannot proceed *pro se* and that it must engage new counsel, who shall file a notice of appearance by February 10, 2022.” *Id.* Similarly, in the event that no attorney appears on behalf of Defendant, Plaintiff was directed to “file a letter by February 10, 2022 advising the Court on proposed next steps, including whether Plaintiff intends to move for default judgment.” *Id.* The Court further directed Mr. Herman to provide a copy of the January 11, 2022 Order to Defendant and “to advise Defendant that failure to engage new counsel by the February 10, 2022 deadline may result in a default judgment.” *Id.* Neither party complied with the Court’s February 10, 2022 deadline.

On February 11, 2022, the Court directed Plaintiff to “file a letter by February 16, 2022 advising the Court on proposed next steps, including whether Plaintiff intends to move for default judgment,” as previously directed in the Court’s January 11, 2022 Order. Dkt. 33 at 1. The Court advised Plaintiff that “Plaintiff’s failure to comply with the Court’s [February 11, 2022] order may result in dismissal of this action pursuant to Federal Rule of Civil Procedure 41.” *Id.* at 1-2. After

Plaintiff once again failed to comply with the Court's Order, on February 17, 2022, the Court ordered Plaintiff to "show cause why this case should not be dismissed for failure to prosecute and/or for failure to comply with the Court's orders pursuant to Rule 41(b) of the Federal Rules of Civil Procedure" by February 24, 2022. Dkt. 34 at 2. The Court warned that "[i]f Plaintiff fails to show cause why this action should not be dismissed by February 24, 2022, the Court may dismiss this action for failure to prosecute and/or for failure to comply with the Court's orders without further notice." *Id.* Plaintiff did not file anything by the February 24, 2022 deadline.

Rule 41(b) of the Federal Rules of Civil Procedure authorizes a court to dismiss an action for failure of the plaintiff "to prosecute or to comply with . . . a court order." "Although the text of Fed. R. Civ. P. 41(b) expressly addresses only the case in which a defendant moves for dismissal of an action, it is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute." *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001); *see also Lewis v. Rawson*, 564 F.3d 569, 575 (2d Cir. 2009) (the power of a district court to dismiss an action for violating a court order "has generally been considered an inherent power, governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases"). Plaintiff has failed to comply with the Court's January 11, 2022, February 11, 2022, and February 17, 2022 Orders,<sup>1</sup> and the Court provided notice to Plaintiff that failure to comply with the Court's Orders would result in dismissal.

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<sup>1</sup> In addition to failing to comply with the aforementioned Orders of January 11, 2022, February 11, 2022, and February 17, 2022, the parties have failed to comply with the Court's Orders dated February 17, 2021, Dkt. 15, April 2, 2021, Dkt. 19, September 1, 2021, Dkt. 26, and September 21, 2021, Dkt. 27. Plaintiff also failed to comply with the Court's Order of January 15, 2021, Dkt. 5.

Accordingly, this action is dismissed without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure. Any pending motions are moot. All conferences are canceled. The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: March 1, 2022  
New York, New York

  

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JOHN P. CRONAN  
United States District Judge